

BRB Nos. 06-0317 BLA
and 06-0317 BLA-A
Case No. 01-BLA-0128

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| BILLY FURGERSON |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| JERICOL MINING, INCORPORATED |) | DATE ISSUED: 05/25/2006 |
| |) | |
| Employer/Cross-Petitioner |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS’ COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | ORDER |

On January 4, 2006, claimant filed a Notice of Appeal with the Board. On January 20, 2006, the Board acknowledged claimant’s appeal, docket number BRB No. 06-0317 BLA, and directed claimant to file a Petition for Review and brief.

On January 9, 2006, employer filed a Notice of Cross-Appeal with the Board. On January 20, 2006, the Board acknowledged employer’s cross appeal, docket number BRB No. 06-0317 BLA-A, and directed employer to file a Petition for Review and brief. On February 21, 2006, the Board received employer’s Cross-Petition for Review and brief, challenging the administrative law judge’s rulings on the issues of the timeliness of this duplicate claim pursuant to 20 C.F.R §725.308; the admissibility of Dr. Castle’s report; and the establishment of a material change in condition pursuant to 20 C.F.R. §725.309.

By motion dated February 17, 2006, claimant requested an enlargement of time to file a Petition for Review and brief. By Order dated March 9, 2006, the Board directed claimant to file a Petition for Review and brief within ten days of receipt of the Order, or to show cause why his appeal, BRB No. 06-0317 BLA, should not be dismissed for failure to do so. 20 C.F.R. §§802.211, 802.217, 802.218, 802.402.

On March 24, 2006, the Board received claimant’s Motion for Modification and Remand, BRB No. 06-0317 BLA. In support of the motion, counsel states that he is pursuing modification at the District Director level. Claimant also submitted new evidence. 20 C.F.R. §802.301. On March 29, 2006, employer filed its Objection to

claimant's Motion for Modification and Remand, urging the Board to deny claimant's motion; to retain jurisdiction over employer's cross-appeal, BRB No. 06-0317 BLA-A, and resolve the issues raised therein; and to dismiss claimant's appeal with prejudice. Upon review of the parties' arguments, the Board dismisses claimant's appeal and employer's cross-appeal, and remands this case to the district director for modification proceedings. 20 C.F.R. §§725.310, 802.301.

On March 27, 2006, the Director filed a Motion for Enlargement of Time to Submit a Consolidated Response to both claimant's and employer's Petition for Review and brief. 20 C.F.R. §§802.212, 802.217. In light of the above action, the Director's motion is rendered moot.

After the request for modification is processed by the district director, the case may be transferred to an administrative law judge for a hearing pursuant to the regulations. Any party who is aggrieved by the decision on modification may file an appeal with the Board within thirty (30) days of the date the decision on modification is filed, and that appeal will be assigned a new number. 20 C.F.R. §§802.205, 802.301. The current appeal and/or cross-appeal will be reinstated only if either party additionally files a request for reinstatement with the Board within thirty (30) days from the date the decision on modification is filed. The request for reinstatement must be served on all parties, and must be identified by claimant as BRB No. 06-0317 BLA or by employer as BRB No. 06-0317 BLA-A. The appeal of the decision on modification will then be consolidated with any reinstated appeal or cross-appeal.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge